



Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED VERSION

Matter of: The Jonathan Corporation; Metro Machine Corporation

File: B-251698.3; B-251698.4

Date: May 17, 1993

Thomas P. Barletta, Esq., and Sharon I. Block, Esq., Steptoe & Johnson, for Metro Machine Corporation; and Eric W. Schwartz, Esq., F. Brian Schneiderman, Esq., and Thomas F. Betz, Jr., Esq., Mays & Valentine, and William A. Lascara, Esq., for The Jonathan Corporation, the protesters. Terence Murphy, Esq., and James H. Shoemaker, Esq., Kaufman & Canoles, for Moon Engineering Co., an interested party.

Scott Garner, Esq., and Rhonda Russ, Esq., Naval Sea Systems Command, for the agency.

John Van Schaik, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency cost realism analysis of offerors' proposed costs which mechanically adjusts proposed labor hours and material costs by essentially splitting the difference between the government's estimate and the contractor's estimate for all contractor estimates that are [deleted] percent greater or [deleted] percent less than the government estimate does not satisfy the requirement for an independent analysis of each offeror's proposed costs.

2. Where government estimate of labor hours and material costs required to perform a contract differs substantially from the contractors' proposed estimates and is not revealed to offerors, contracting agency should conduct discussions with the offerors concerning the discrepancy.

3. Even where solicitation states that the agency intends to award a contract without holding discussions unless discussions are necessary, the decision that discussions are not necessary must be reasonably based on the particular

The decision issued on May 17, 1993 contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

circumstances of the procurement, including consideration of the proposals received and the basis for the selection decision.

DECISION

The Jonathan Corporation and Metro Machine Corporation protest the award of a contract to Moon Engineering Company, Inc. under request for proposals (RFP) No. N00024-93-R-8500, issued by the Department of the Navy for maintenance of three Navy ships homeported in Norfolk, Virginia.

We sustain the protests.¹

BACKGROUND

The solicitation contemplated award of a cost-plus-award-fee contract to provide all materials, services and facilities necessary to perform phased maintenance on three Navy amphibious ships, the USS PORTLAND, the USS PENSACOLA, and the USS AUSTIN, over a 5-year period. Phased maintenance is a strategy in which maintenance is performed through a series of short, frequent phased-maintenance availabilities (PMA), in lieu of regular overhauls. The solicitation also calls for drydock-phased maintenance availabilities (DPMA), which involve putting a ship in drydock to perform repairs below the water line, in addition to the repairs that would be performed in a PMA. The solicitation included five PMAs and two DPMAs. Since a DPMA includes all the work items in a PMA, in addition to all the items unique to a drydock availability, the contract actually includes seven PMAs, two of which include additional drydock work.²

Award under the solicitation was to be made to the offeror whose proposal was most advantageous to the government, considering cost and other factors. The solicitation included the following four evaluation categories, listed in descending order of importance: management capability; technical approach; resource availability; and cost. The solicitation stated that the evaluation of cost was to

¹Since we sustain these protests and recommend conducting discussions and requesting best and final offers (BAFO), our discussion of the agency's evaluation, and of the underlying proposals, is necessarily limited.

²According to the solicitation, in the basic period of the contract the contractor is to accomplish advance planning for the USS AUSTIN. All of the remaining work under the solicitation, including the seven availabilities, is covered by option periods spanning 5 years.

include consideration of the proposed cost for options, in addition to the basic period of performance and that "(c)ost, while not necessarily controlling, will be an important evaluation factor, and the degree of importance will increase as technical scores approach equality." The cost evaluation category included subfactors for cost realism (considered to be significantly more important than the other factors), cost to the government, and cost data support.

The solicitation also stated that "[t]he [g]overnment intends to evaluate proposals and award a contract without discussions with offerors . . . [h]owever, the [g]overnment reserves the right to conduct discussions if later determined by the [c]ontracting [o]fficer to be necessary."

With respect to cost proposals, the RFP stated:

"Proposed cost will be evaluated by the [g]overnment, taking into account the realism, reasonableness, and validity thereof. In evaluating the offeror's proposal, the [g]overnment will estimate the overall cost to the [g]overnment which in the [g]overnment's judgment will result from the offeror's performance of the contract. In making this determination, the [g]overnment shall consider the offeror's proposed cost and the realism and validity of these figures."

In addition, the solicitation stated that the agency would "review the offeror's cost data, including comparison to the [g]overnment estimate . . . [a]s a result of this analysis, the [g]overnment will make adjustments to the offeror's proposed costs in order to develop an estimate of the projected cost to the [g]overnment."

The solicitation instructed offerors to base their cost proposals on a notional, or standardized work package included with the solicitation. The notional work package included 85 individual work items, which constitute a standardized list of repairs and alterations necessary to complete 1 PMA, and 15 additional drydock work items which are necessary to complete 1 DPMA. For each of these 100 work items, offerors were required to propose the number of direct labor hours and the cost of materials to perform the item. Proposals also were to include estimates of the overall cost of performing 5 PMAs, each consisting of all the PMA (nondrydock) work items, and 2 DPMA, each consisting of all the DPMA (drydock and nondrydock) work items in the notional package.

In addition to the work item estimates of labor hours and material costs, the solicitation required that other cost information be submitted with initial proposals. Section L.4.2 stated that initial proposals should include two categories of cost information. First, offerors were to include their "estimating rationale and assumptions used in developing the proposal," including current forward pricing rate agreement rates, historical labor, overhead, general and administrative (G&A) and other proposed rates for the last 4 corporate fiscal years plus year-to-date actuals, and projections for all rates and factors throughout the duration of the contract, including base/expense pool projections for all years. This first category of information was also to include a discussion of the basis for learning and overtime/shift work proposed, support for the calculation of facilities cost of money proposed including identification of major facilities investments, rationale for work item estimates, and "[e]xplanation, quantification, and location of any significant costs that are included somewhere other than in the appropriate work item (i.e., in overhead pool, etc.)."

The second category of cost information requested was "Summary Cost Data." The RFP required that this information clearly trace the cost of each work item through the appropriate subtotals to the total proposed costs.

In addition to the cost information required to be included in the initial proposals, § L.4.2.3 of the RFP referred to a third category of cost data which "may be requested at time of discussions." The RFP stated, however, that this information "was not to be submitted with [an offeror's] initial proposal." According to the RFP, this supporting data, if requested, was to reflect:

- "a. Prime labor manhours by craft and by work item paragraph.
- b. Subcontract labor manhours and material dollars by item.
- c. Prime CFM (contractor furnished material) for each work item showing description, quantity, unit price and total price."

Finally, the RFP stated that "[f]ailure to provide complete supporting data for each specification work item may hinder [g]overnment analysis of an offeror's cost proposal. As a result, an offeror who fails to provide complete supporting data may receive a less favorable projected cost to the government because proposed costs are not adequately supported."

Five offerors submitted proposals in response to the solicitation. The agency evaluated and scored the proposals under the technical evaluation categories listed in the RFP resulting in the following overall technical scores:

[Deleted]	[deleted]
Metro	[deleted]
Jonathan	[deleted]
Moon	[deleted]
Norfolk Shipbuilding and Drydock Corporation	[deleted]

Concurrent with the technical evaluation, an agency cost analyst evaluated the cost proposals and calculated an overall evaluated cost to the government for each offeror. The evaluated cost was based in part on a comparison of each offeror's cost proposal to the government's estimate of the cost of the work.

During a hearing convened by our Office, the Navy's cost analyst explained that she calculated a projected cost to the government for each offeror by first entering into a computer the offeror's proposed labor hours and material costs for each of the 100 work items in the notional work package--i.e., the 85 items associated with completing 1 PMA, and the 15 additional drydock items associated with completing 1 DPMA. The computer then compared those numbers with the government's labor and material estimates for each work item. The computer was programmed to accept an offeror's labor hour and material costs for a work item if the number was within plus or minus [deleted] percent of the government's estimate for that item.

For those work items where an offeror's proposed labor hour and material cost estimates were outside the [deleted] percent range, the source selection plan proposed a two-pronged approach. The first approach provided that if an "[offeror's estimate is not adequately supported with data and rationale," the estimate would be rejected and the government's labor hour or material cost estimate would be used instead to calculate the projected cost to the government. The second approach provided that if an "[offeror's estimate is well supported with an equal probability of [government or offeror being correct," the following predetermined mathematical formula would be used to determine an adjusted labor hour or material cost estimate:

"One half of the difference between the [government estimate and the offeror's proposed cost [will be] added to (or subtracted from) the offeror's estimate after first reducing or increasing the [government estimate by [deleted]]"

in the direction of the difference (reduce the difference) in order to establish projected cost and adjustment dollars."

In other words, the computer program approximately "split the difference" between the government's labor hour or material cost estimate and the offeror's proposed labor hours and material cost for each of the 100 work items in the notional package.

The Navy reports that, although it was not spelled out in the source selection plan, a third option was available for evaluating proposed labor hour and material cost estimates which were outside of the [deleted] percent range. According to the Navy, if the supporting data and rationale in the proposal was sufficient and persuasive, the cost analyst could choose to fully accept the contractor's estimate and use that figure in calculating an offeror's projected cost.

In the actual evaluation, the Navy accepted all contractor proposed labor hour and material cost estimates which were within a [deleted] percent range of the government estimate. On all remaining contractor estimates of labor hours and material costs for both protesters and the awardee--in fact, for all offerors--the "split the difference" formula was applied. That is, for all contractor labor hour and material cost estimates outside the [deleted] percent range, the Navy accepted neither the contractor's estimate of the number of labor hours or cost of materials nor the government's estimate. Rather, the Navy applied the formula above and developed an evaluated figure that was slightly less than one half of the difference between the government estimate and the contractor's estimate.

After totaling all of the adjusted labor hour and material cost estimates for the 100 work items in the notional work package, the proposed and evaluated figures for the two protesters and the awardee were as follows:

	Proposed		Evaluated	
	Labor Hours	Material	Labor Hours	Material
Gov't Est.	[deleted]	[deleted]		
Moon	[deleted]	\$ [deleted]	[deleted]	\$ [deleted]
Metro	[deleted]	\$ [deleted]	[deleted]	\$ [deleted]
Jonathan	[deleted]	\$ [deleted]	[deleted]	\$ [deleted]

The Navy then used its computer program to extend the adjusted labor hour and material dollar estimates for the notional work package over the five PMAs and two DPMAs in the RFP. The Navy reports that the cost analyst also

reviewed the historical information and estimating rationale supplied by each offeror concerning labor rates, overhead, G&A, facilities capital cost of money rates, overtime, material and subcontractor escalation, labor learning and other costs and adjustments included in the proposals. Based upon this analysis, and the computer generated comparison of labor hours and material costs, the cost analyst calculated an overall evaluated cost to the government for each offeror. The total proposed costs, total adjustment amounts and the overall evaluated costs for the two protesters and the awardee were as follows:

<u>OFFEROR</u>	<u>PROPOSED COST</u>	<u>ADJUSTMENT</u>	<u>EVALUATED COST</u>
Moon	\$22,450,361	\$(deleted)	\$(deleted)
Metro	\$(deleted)	\$(deleted)	\$(deleted)
Jonathan	\$(deleted)	\$(deleted)	\$(deleted)

In addition to adjusting each offeror's proposed costs, the cost analyst also assigned scores to the cost proposals for each of the three cost subfactors: cost data support; cost to the government; and cost realism.

After completing the evaluations, the Navy decided that all offerors were technically equal and that discussions were not necessary since, according to chairman of the evaluation panel:

"While all offerors have some major weaknesses in their technical proposals, it is anticipated that if a round of discussions were held both technical and cost evaluations would show no significant changes leaving all offerors still technically equivalent. As a result, low cost would become the determining factor. Because none of the technical proposals contain weaknesses that would affect the quality of performance, because all offerors are technically qualified to do the work, and because all proposals are essentially technically equal, it is recommended that award be made at this time without holding discussions. It should be noted that the solicitation notified offerors of the government's intention to award without discussions."

In addition, the contracting officer concluded that there was no need to hold cost discussions since the proposed labor hours and material costs for (deleted)--were very close, and since these (deleted) offerors were experienced in the maintenance work required by the contract. The contracting officer also noted that "because the quality of the supporting data was above average in those (deleted) it would not benefit the government to ask cost questions."

After the agency decided not to hold discussions, the contract was awarded to Moon since all proposals were determined to be technically equal, and since Moon's proposal was determined to have the lowest evaluated cost.

DISCUSSION

Protest Allegations

Both Jonathan and Metro principally argue that the method used by the Navy to evaluate the cost proposals was arbitrary and irrational since it mechanically adjusted offerors' proposed labor hour and material cost estimates based on a comparison to an undisclosed government estimate. According to the protesters, by failing to perform an independent analysis of each offerors' proposed costs, the Navy's award decision failed to recognize that their costs would have been lower than Moon's. Thus, they argue that award to Moon as the low cost offeror was improper.

In addition, both protesters argue that it was unreasonable not to conduct discussions concerning the cost proposals since cost became the determinative factor in the selection decision, and since the calculation of each offeror's projected cost included large computer-generated adjustments to proposed costs based on a rote comparison with the government estimate. The protesters note that the cost analyst who evaluated the cost proposals prepared discussion questions concerning the cost proposals of each offeror and that, for the protesters, these questions relate directly to perceived weaknesses in their proposals that could have been easily corrected.

Metro argues that the Navy unreasonably rejected its proposed labor learning factor and applied different and higher standards in its evaluation of Metro's proposed learning factor--and in its evaluation of indirect rates--than it applied to Moon's. According to Metro, had the Navy accepted its proposed learning factor, Metro would have the lowest overall evaluated cost and would have been the awardee. In addition, Metro argues that the Navy arbitrarily substituted Metro's fiscal year 1993 forward pricing rates for the indirect rates which Metro had proposed for the uncapped years of the contract.

In addition, Metro contends that Moon's proposal violated the terms of the RFP by not including a firm commitment from a subcontractor to provide a drydock for the two DPMAs scheduled under the contract, and should have been rejected. According to Metro, even if Moon's proposal were considered acceptable, its failure to include a drydock commitment was a substantial weakness that should have precluded a finding that Moon's proposal was technically equal to Metro's.

Finally, Metro argues that the Navy failed to adequately evaluate Moon's cost proposal.

In addition to the contentions which it shares with Metro, Jonathan argues that the Navy arbitrarily and unreasonably adjusted Jonathan's overhead and G&A rates and inappropriately applied a composite labor rate to the proposal. According to Jonathan, if not for these errors, it would have been evaluated as the offeror with the lowest overall cost and it would have received the award.

Timeliness

As a preliminary matter, the Navy argues that both protests are largely untimely. The Navy notes that the RFP stated that proposed costs would be compared to the government estimate in the cost evaluation; that the agency would consider current forward pricing rates in the evaluation; that the cost evaluation would not examine proposed work item estimates to the level of detail for which RFP § L.4.2.3 data would be required, unless that additional information was requested in discussions; that discussions were not intended; and that any costs of performance which were accounted for by a particular offeror's accounting system as indirect costs should be identified as such. The Navy argues that its actions in evaluating proposals and awarding the contract were consistent with these RFP provisions, and that objections to these provisions underlie the majority of the protesters' allegations. According to the Navy, therefore, the protests are untimely to the extent that they object to the evaluation and selection scheme set forth in the RFP, including the solicitation instructions concerning proposal preparation, the cost evaluation method to be used, and the decision to award the contract without discussions.

As the Navy argues, a protest based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to the receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1993). The Navy is incorrect, however, in asserting that Metro and Jonathan have protested the terms of the RFP concerning proposal preparation, the cost evaluation, and the intent to award the contract without discussions. Rather, the protests concern the manner in which the Navy actually evaluated the proposals, and the Navy's decision not to hold discussions. Therefore, these allegations are timely raised within 10 days of the time the protesters learned of their bases for protest. 4 C.F.R. § 21.2(a)(2).

Cost Realism Adjustment

Both Metro and Jonathan argue that the Navy's evaluation and adjustment of offerors' proposed labor hours and material costs for the notional work package was improperly based on a rigid, computer-generated, mathematical comparison of their proposed hours and costs to the government's estimate, and that the evaluation did not take into account any offeror's particular approach to performing the contract. Further, the protesters maintain that the Navy's mechanical application of the computer formula rendered the use of the government's estimate as a cost realism tool meaningless because it simply adjusted many offeror estimates incrementally closer to the government estimate no matter what the estimate was and regardless of the support for that estimate included by the contractor in its proposal.

Where, as here, a cost reimbursement contract is awarded, the offerors' proposed costs of contract performance should not be considered controlling, since they may not provide valid indications of the actual costs which the government is, within certain limits, required to pay. Bendix Field Eng'g Corp., B-230076, May 4, 1988, 88-1 CPD ¶ 437. Thus, the government's evaluation of estimated costs should determine the extent to which the offerors' proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Arthur D. Little, Inc., B-229698, Mar. 3, 1988, 88-1 CPD ¶ 225. Our review of an agency's cost evaluation is limited to a determination of whether the evaluation was reasonably based and was not arbitrary. Id.

Here, the Navy concluded that all proposals were technically equal, technically acceptable, and that award should be made to the low evaluated offeror. Concurrently, the agency analyzed each of the offeror's cost proposals and made adjustments to the proposed costs as part of the cost realism evaluation. Following the recommendation of the technical evaluators, the contracting officer made award to Moon based on its low evaluated cost.

As explained above, in order to calculate an evaluated cost for each proposal, the Navy's cost analyst entered into a computer each offeror's labor hour and material cost estimate for the 100 work items in the notional work package. The computer was programmed to compare the offeror's proposed labor hours and material costs with the government's labor hour and material cost estimates for each work item. The computer automatically accepted those offeror estimates that were within [deleted] percent of the government's estimate and, for all offeror estimates outside the [deleted] percent range, the computer adjusted the offeror's estimate by means of a mathematical formula which

approximately split the difference between the contractor estimate and the government estimate.

The Navy maintains that this "split the difference" approach was a rational means of analyzing the realism of proposed costs because the approach was only used after the cost analyst concluded that the offeror's estimate was sufficiently supported. In this respect, the Navy maintains that the cost analyst reasonably used this approach on every proposed labor hour and material cost estimate outside of the [deleted] percent range, consistent with the source selection plan, because in every case the "[o]fferor's estimate [was] well supported with an equal probability of [g]overnment or [o]fferor being correct."

While a reasonably derived estimate of labor hours and material costs based on historical experience can provide an objective standard against which the realism of proposed costs can be measured, an agency may not mechanically apply that estimate to determine evaluated costs. Kinton, Inc., 67 Comp. Gen. 226 (1988), 88-1 CPD ¶ 112. In some instances, an estimate has limited applicability to a particular company because of the skill of its labor force, or its innovative work methods, or simply because of the way the offeror prepares its proposal. Allied Cleaning Servs., Inc., B-237295, Feb. 14, 1990, 90-1 CPD ¶ 275; Kinton, Inc., supra. In those cases, any absolute reliance upon the government estimate could have the effect of arbitrarily and unfairly penalizing or rewarding one firm and depriving the government of the benefit available from the different approaches of different firms. Accordingly, in order to undertake a proper cost realism evaluation, the agency must independently analyze the realism of an offeror's proposed costs based upon its particular approach, personnel, and other circumstances. United Int'l Eng'g, Inc.; Morrison Knudsen-Dynamics Research, PRC Inc.; and Science Applications Int'l Corp., 71 Comp. Gen. 177 (1992), 92-1 CPD ¶ 122.

The Navy maintains that it met this standard of independent review of each offeror's approach because it considered the rationale presented in each proposal, and the government estimate, before determining "the appropriate manhour and material dollar adjustment for each work item." Nonetheless, the record shows that every contractor labor hour and material cost estimate within [deleted] percent of the government estimate was accepted, while every contractor estimate outside the [deleted] percent range was automatically adjusted using the "split the difference" formula. Thus, in every instance where an offeror's estimate was [deleted] percent above or below the government estimate, the computer automatically applied the formula and did so no matter how large the disparity between the

government's estimate and the offeror's estimate. In our view, there is a high probability that this mechanical analysis skewed the offerors' projected costs which formed the basis for the award decision.

Our review indicates that for many of the labor hour and material cost estimates, the Navy's adjustment method led to anomalous results. The treatment of estimates that were low in relation to the government estimate illustrates the arbitrary nature of the Navy's mechanical evaluation method. Between these three proposals there are 93 work item estimates in which the offeror proposed no labor hours or no material cost for one of the 100 work items in the notional package. For 41 of those 93 estimates, the government estimate also included no labor hours or material costs. Thus, the proposals of the two protesters and the awardee included 52 "0" labor hour or "0" material cost estimates for work items where the government estimate included labor hours or material costs. None of these 52 estimates was totally accepted or rejected in the cost evaluation; in every case, the cost analyst applied the "split the difference" formula resulting in an adjustment of the offeror's "0" proposal to slightly less than one half of the government estimate. We think that a reasonable cost analysis that considered each offeror's individualized approach would have recognized the possibility--in fact, the likelihood--that where the contractor proposed estimates of "0" labor hours or "0" material costs, the labor hours or material costs for the work items in question may have been accounted for elsewhere in the proposal, such as in overhead.³

In addition, we think there was an even more fundamental flaw in the Navy's method here. The Navy reports that the cost analyst applied the "split the difference" formula on all contractor estimates outside of the [deleted] percent range on which she determined, consistent with the source selection plan, that the "[o]fferor's estimate is well supported with an equal probability of [g]overnment or

³We have discussed the "0" labor hour and "0" material cost estimates for illustrative purposes, but these are not the only instances where the Navy's "split the difference" approach strains rationality. The cost evaluation results include numerous other examples of large adjustments to contractor proposed labor hour and material dollar estimates based on the application of the "split the difference" formula.

[o]fferor being correct."⁴ The Navy's approach did not provide a justification for the adjusted labor hour or material cost estimate that was actually used to calculate an offeror's evaluated cost. Put another way, if an offeror proposed no material cost for a work item and the government estimate included \$20,000 in material costs for that work item, we see no rational basis for substituting an estimate of \$[deleted]⁵--the adjusted material cost estimate that would be used in the calculation of the contractor's overall projected cost in this example.

Since the agency failed to consider each offeror's individualized approach and instead mechanically adjusted proposed labor hours and material costs, the agency's cost evaluation did not satisfy the requirement for an independent analysis of each offeror's cost proposal based upon its particular approach, personnel, and other circumstances. United Int'l Eng'g, Inc.; Morrison Knudsen-Dynamics Research; PRC Inc.; and Science Applications Int'l Corp., supra; Kinton, Inc., supra.

Failure to Hold Discussions

Both protesters also contend that it was unreasonable for the Navy to fail to hold discussions concerning the cost proposals given the nature, magnitude, and method of the adjustments made to each offeror's costs. We agree.

The Navy responds that it was reasonable to award the contract without discussions in this case since the solicitation stated that "[t]he [g]overnment intends to evaluate proposals and award a contract without discussions with offerors. . . . [h]owever, the [g]overnment reserves the right to conduct discussions if later determined by the [c]ontracting [o]fficer to be necessary." As the Navy notes, this provision was included in the RFP pursuant to

⁴Nonetheless, there is no written record of the cost analyst's judgments as to the sufficiency of the support included in the proposals for the labor hour and material dollars estimates. The Federal Acquisition Regulation (FAR) requires agencies to document their cost evaluations, FAR § 15.608(a), and the failure to do so here makes it impossible to determine whether the judgments of the cost analyst concerning the sufficiency of the support included in the proposals for labor hour and material cost estimates were reasonable.

⁵ \$20,000 - \$[deleted] ([deleted] percent) = \$[deleted]

FAR § 15.610(a), which authorizes award on the basis of initial proposals without conducting discussions if the contracting officer determines that discussions are not necessary and the solicitation contains the provision at FAR § 52.215-16, Alternate III. That provision is substantially the same as the provision included in the RFP here and states the agency's intention to award a contract without discussions while reserving the "right to conduct discussions if later determined by the Contracting Officer to be necessary."

Pursuant to the regulations which authorize award without discussions, a contracting officer has discretion to decide in a particular procurement whether or not to hold discussions. FAR § 15.610(a)(4). Nonetheless, that discretion is not unfettered. Rather, the decision that discussions are not necessary must be reasonably based on the particular circumstances of the procurement, including consideration of the proposals received and the basis for the selection decision. Where, as here, the government estimate is not revealed to offerors and proposals substantially deviate from that estimate, the contracting agency should consider the possibility that the proposals may, nevertheless, be advantageous to the government and conduct discussions with the offerors concerning the discrepancy.⁶ Kinton, Inc., supra; Teledyne Lewisburg; Oklahoma Aerotronics, Inc., B-183704, Oct. 10, 1975, 75-2 CPD ¶ 228.

Our review of the record shows that the cost analyst prepared written questions for each of the offerors concerning their cost proposals. While the preparation of discussion questions, in itself, does not require that discussions be conducted, many of the questions here were in areas of the cost evaluation which the protesters have questioned, and would have generated answers which could have significantly changed the nature and extent of the cost adjustments made by the Navy and therefore could have changed the outcome of the procurement.

With respect to Metro, the questions prepared by the Navy concerned 36 of Metro's labor hour or material dollar estimates, including many which were adjusted sharply in the cost evaluation because they were [deleted] percent greater or less than the government estimate for the work item in question. Also, a discussion question prepared for Metro would have asked for additional information or rationale to

⁶For labor hours, the government estimate exceeded the average of the offerors' estimates by [deleted] percent and, for material dollars, the government estimate exceeded the average of the contractors' estimates by [deleted] percent.

support Metro's proposed [deleted]--another area in which Metro's proposed costs were significantly adjusted.

The questions prepared for Jonathan concerned 34 labor hour and material dollar estimates on which the "proposed amounts differ significantly from the [g]overnment estimate," and many of these estimates were adjusted by large amounts in the cost evaluation. Also, one of the questions prepared for Jonathan asked the company to "provide [its] [deleted]." Jonathan notes that its [deleted].⁷

In this case, for the reasons set forth above, we agree with the protesters that discussions were necessary and that the contracting officer lacked a reasonable basis for determining otherwise. Although the Navy contracting officials attempted to justify the decision not to hold discussions based on the equality of the technical proposals, the closeness of the offerors' proposed costs, and numerous other reasons, we conclude that discussions were required because of the disparity between the estimates of the government and the offerors, and because of the agency's numerous questions concerning the cost proposals.⁸

⁷We also note that the discussion questions prepared for Moon, the awardee, included a list of 36 labor hour or material cost estimates where Moon's proposal differs "significantly from the Government estimate." In our view, the numerous work item estimates questioned in Moon's proposal raise the possibility that Moon's overall projected cost also could have changed significantly as a result of discussions.

⁸With respect to Metro's related contentions that the Navy unreasonably rejected its proposed labor learning curve; applied different and higher standards in its evaluation of proposed learning to Metro than it applied to Moon; arbitrarily substituted Metro's fiscal year 1993 forward pricing rates for the indirect rates which Metro had proposed; and applied a different standard to Moon than it did to Metro in its evaluation of indirect rates--and with respect to Jonathan's similar contentions about the adjustments to its overhead and G&A rates, and the application of a composite labor rate--we need not decide these issues. Rather, based on our review of the record, including the contemporaneous evaluation documents, the Navy's submissions in response to the protests, and the hearing transcript, we conclude that the agency either had, or should have had, substantial questions concerning these matters and should have raised those questions in discussions.

Prejudice

We note that in its response to these protests, the Navy repeatedly argued that the protesters could not claim prejudice as a result of the cost evaluation here, or as a result of the agency's failure to hold discussions. According to the Navy, since the relative position of Moon, Jonathan and Metro did not change as a result of the cost realism adjustment, neither Jonathan nor Metro was harmed by the Navy's cost realism review, or by its failure to hold discussions.

In our view, if the Navy was correct, there would be no reason to review the realism of cost proposals, since the original proposed cost of an offeror would be determinative of its relative ranking with respect to cost. The FAR requires agencies to evaluate offeror's proposed estimated costs for the very reason that such costs are not dispositive: regardless of the costs proposed, the award of a cost reimbursement contract binds the government to pay the contractor all actual, allowable, and properly allocable costs. FAR § 15.605(d). Where, as here, an agency clearly violates procurement requirements, we will resolve any doubts concerning the prejudicial effect of the agency's action in favor of the protester, United Int'l Eng'g, Inc.; Morrison Knudsen-Dynamics Research; PRC Inc.; and Science Applications Int'l Corp., supra, and a reasonable possibility of prejudice is a sufficient basis for sustaining a protest.⁹ McKesson Corp.; Harris Wholesale Co.-Recon., B-243018.2 et al., Aug. 20, 1991, 91-2 CPD ¶ 170.

Evaluation of Drydock Availability

Metro also contends that the Navy should have rejected Moon's proposal since, contrary to the RFP, Moon did not include in its proposal a firm commitment from a

⁹Likewise, the Navy notes that many of the work item estimates listed in the discussion questions for Metro and Jonathan are also listed in the questions for Moon, and argues that if Metro or Jonathan would benefit from discussions, Moon would likely benefit as well, resulting in no change in the relative standing of the offerors. This argument--that there was no prejudice to the protesters as a result of the failure to hold discussions--is based on the assumption that none of the offerors would be able to justify the estimates in their cost proposals better than any other offeror. The Navy's attempt to substitute speculation for a reasoned analysis of each offeror's relative standing does not establish a lack of prejudice resulting from its failure to hold discussions.

subcontractor to provide a drydock for the two DPMAs scheduled under the contract. In addition, Metro argues that, even if Moon's proposal were considered acceptable, its failure to include a commitment of a drydock was a substantial weakness that should have precluded a finding that Moon's proposal was technically equal to Metro's.

The RFP stated:

"The successful offeror must have access to a drydock to perform the work requirements. The offeror should clearly demonstrate the availability of a drydock; include any subcontract or leasing agreement or letter of agreement."

In response, Moon's proposal included [deleted].

The Navy's technical evaluators considered the issue of Moon's drydock availability and concluded that Moon's proposal was acceptable. The evaluators noted that Moon had successfully completed a previous similar contract which included one drydock availability, and that [deleted]. The evaluators also noted that Moon intended [deleted] but concluded that Moon should have no trouble obtaining a drydock since there are several drydocks in the Norfolk area.

We think that the evaluation of Moon's drydock availability was reasonable. Although Moon's proposal did not include a firm commitment of a drydock, the RFP did not require such a commitment; rather the RFP required the proposal to "demonstrate the availability" of a drydock. We think that the agency evaluators reasonably considered the fact that there are several drydocks in the area and that Moon had successfully completed a similar contract in the past [deleted]. Finally, although Metro argues that Moon's failure to propose a firm commitment for a drydock should have precluded a finding that Moon's proposal was technically equal to Metro's, the record shows that the evaluators considered this issue and [deleted]. Nonetheless, the evaluators concluded that in spite of this [deleted], Moon's proposal was technically equal to the others submitted. We have no basis to disagree with that conclusion.

RECOMMENDATION

Accordingly, we recommend that the Navy reevaluate the cost proposals using a method of cost realism analysis that reasonably determines the extent to which each offeror's proposed costs represent what the contract should cost for that offeror to perform. In addition, we recommend that the agency conduct discussions with the offerors concerning their cost proposals, and request BAFOs from all offerors in the competitive range. We also find that Metro and Jonathan are entitled to recover their costs of filing and pursuing their protests, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1). The protesters should submit their claims for such costs directly to the agency.

The protests are sustained.

Comptroller General
of the United States